



# RULE-MAKING ORDER

(RCW 34.05.360)

CR-103 (7/22/01)

Agency: Washington State Patrol

- ☐ Permanent Rule  
☒ Emergency Rule  
☐ Expedited Rule Making

(1) Date of adoption: May 14, 2004

(2) Purpose: To clarify and amend rules defining the dates of fireworks purchase, possession, and discharge. To add rules for the issuance of fines and citations.

(3) Citation of existing rules affected by this order:

Repealed:

Amended: WAC 212-17-060 (revised), WAC 212-17-480, 485, 490, 495, 500, 505, 510, 515, 520, 525, 530, 535, 540 (added)

Suspended:

(4) Statutory authority for adoption: RCW 43.43 and 70.77

Other Authority:

PERMANENT RULE ONLY (Including Expedited Rule Making)

Adopted under notice filed as WSR \_\_\_\_\_ on \_\_\_\_\_ (date).

Describe any changes other than editing from proposed to adopted version:

EMERGENCY RULE ONLY

Under RCW 34.05.350 the agency for good cause finds:

- ☒ (a) That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- ☐ (b) That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding: These rules need to be in effect by June 28, 2004, the date in which fireworks sales begin, in accordance with RCW 70.77.395. Since the rules pertain to fireworks discharge, they are necessary for public safety.

(5.3) Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?:

☒ Yes ☐ No If Yes, explain: The rule changes must be in effect by the start of fireworks sales.

(6) Effective date of rule:

Permanent Rules

- ☐ 31 days after filing  
☐ Other (specify) \_\_\_\_\_ \*

Emergency Rules

- ☒ Immediately  
☐ Later (specify) \_\_\_\_\_

\*(If less than 31 days after filing, specific finding in 5.3 under RCW 34.05.380(3) is required)

Name (Type or Print)

Lowell M. Porter

Signature

Title

Chief

Date

5-17-04

CODE REVISER USE ONLY

CODE REVISER'S OFFICE  
STATE OF WASHINGTON  
FILED

MAY 18 2004

TIME

WSR

AM  
PM

(COMPLETE REVERSE SIDE)

**Note: If any category is left blank, it will be calculated as zero.  
No descriptive text.**

Count by whole WAC sections only, from the WAC number through the history note.  
A section may be counted in more than one category.

**The number of sections adopted in order to comply with:**

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	<u>13</u>	Amended	<u>1</u>	Repealed	_____

**The number of sections adopted at the request of a nongovernmental entity:**

New	_____	Amended	_____	Repealed	_____
-----	-------	---------	-------	----------	-------

**The number of sections adopted in the agency's own initiative:**

New	_____	Amended	_____	Repealed	_____
-----	-------	---------	-------	----------	-------

**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

New	_____	Amended	_____	Repealed	_____
-----	-------	---------	-------	----------	-------

**The number of sections adopted using:**

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	_____	Amended	_____	Repealed	_____



AMENDATORY SECTION (Amending Order FPS 88-01, filed 3/31/88)

**WAC 212-17-060 Public purchase and use of fireworks.** (1) The public may purchase (~~((common))~~) consumer fireworks only from licensed retail fireworks stands between noon, June 28th and ((noon)) 9:00 p.m., July ((6th)) 5th, and noon to 11:00 p.m. from December 27th through December 31st of each year. Purchase or discharge is prohibited between the hours of 11:00 p.m. and 9:00 a.m. Possession and discharge of fireworks is lawful during this period only, except as provided in subsection (~~((+2+))~~) (3) of this section.

(2) The public may use or discharge consumer fireworks between the hours of noon and 11:00 p.m. on June 28th, between the hours of 9:00 a.m. and 11:00 p.m. from June 29th through July 3rd, between the hours of 9:00 a.m. and midnight on July 4th, and between the hours of 9:00 a.m. and 11:00 p.m. on July 5th. The public may also use or discharge fireworks from 6:00 p.m. on December 31st until 1:00 a.m. on January 1st of the subsequent year.

(3) Religious organizations or private organizations or adult persons may be authorized to purchase common fireworks or such audible ground devices as firecrackers, salutes, and chasers, as defined in WAC 212-17-040 (3) and (4) from licensed manufacturers, importers, or wholesalers for use on prescribed dates and locations for religious or specific purposes, when a permit is obtained from the fire chief or other designated local official. Application shall be on forms provided by the director of fire protection and shall contain the following information: (a) The name and mailing address of the organization or person desiring to purchase and discharge the fireworks; (b) the date and time of the proposed discharge; (c) the location of the proposed discharge; (d) the quantity and type of fireworks desired to be purchased and discharged; (e) the reason or purpose of the discharge; and (f) the signature of the applicant, following a statement that: "The applicant understands and agrees to comply with all provisions of the application and requirements of the approving authority, will discharge the fireworks only in a manner that will not endanger persons or property or constitute a nuisance, and assumes full responsibility for all consequences of the discharge, intended or not." Upon approval by the fire official, the applicant may submit a copy of the approval to any licensed wholesaler as proof of authorization to purchase the fireworks listed therein. The applicant shall retain the approval and have it available for inspection by any public official at the actual discharge of the fireworks.

~~((+3+))~~ (4) The purchase or receipt of mail-order fireworks through any medium of either interstate or intrastate commerce is prohibited unless the purchaser has first obtained an importers

license or has complied with the provisions of subsection ((~~2~~))  
(3) of this section.



## NEW SECTION

**WAC 212-17-480 Fines and penalties.** These rules establish the basis and process by which citations and penalties will be determined and issued for violations of chapter 70.77 RCW and chapter 212-17 WAC.

Each violation(s) is classified and penalty(ies) assessed according to violation type and instance.

## NEW SECTION

**WAC 212-17-485 Definitions.** (1) "Citation" means a document issued by the office of the state fire marshal pursuant to chapter 70.77 RCW to issue a civil penalty for a violation of RCW 70.77.480 through 70.77.520. A citation may include, but is not limited to, a description of the violation(s) and a notice of civil penalty assessment.

(2) "Formal hearing" is a hearing before a hearings officer where the laws, rules, and evidence are presented, considered, and a proposed opinion issued.

(3) "Hazard" means a condition which could result in fire loss injury or damage to a person or property.

(4) "Hearings request" means the written request for a formal hearing to contest a civil penalty.

(5) "Instance" means the number of times a person has been cited. These are identified as 1st, 2nd, and 3rd instances.

(6) "Local fire authority" means the local fire official having authority.

(7) "Person" means one or more individuals, legal representatives, partnerships, joint ventures, associations, corporations, (whether or not organized for profit), business trusts, or any organized group of persons and includes the state, state agencies, counties, municipal corporations, school districts, and other public corporations.

(8) "Type" means the classification of violation, i.e., least, minimal, moderate, or severe. These are identified as Type I, II, III, or IV.

(9) "Violation types" shall mean:

(a) "Least violation" means a Type I violation which poses very little hazard or threat;

(b) "Minimal violation" means a Type II violation which poses a minor hazard of threat;

(c) "Moderate violation" means a Type III violation which

poses a significant hazard or threat;

(d) "Severe violation" means a Type IV violation which poses a substantial hazard or threat.

#### NEW SECTION

**WAC 212-17-490 General rules.** (1) These rules establish civil penalty criteria for Types I, II, III, and IV violations and the instances for each type of violation.

(2) These rules apply to persons who violate the requirements of chapter 70.77 RCW and/or chapter 212-17 WAC.

(3) Each separate instance of noncompliance with chapter 70.77 RCW and/or chapter 212-17 WAC shall be considered a separate violation.

(4) Each day that a violation continues shall be considered a separate violation.

(5) The distribution, sale, use, manufacture, or possession of any amount of illegal fireworks is prohibited and subject to citation and penalty.

(6) In addition to the issuance of citations and penalties under these rules, the state fire marshal and/or a local fire marshal acting in accordance with chapter 70.77 RCW and/or chapter 212-17 WAC:

(a) May confiscate any amount of illegal fireworks; and

(b) May confiscate other fireworks possessed by persons violating chapter 70.77 RCW and/or chapter 212-17 WAC.

(7) In addition to the issuance of citations, penalties, and the confiscation of fireworks, the state fire marshal may also revoke, suspend, or deny any fireworks license provided for under chapter 70.77 RCW to any person who fails to pay a penalty(ies) assessed under these rules.

(8) The penalty for each violation shall range from \$0 to \$1000 per day and occurrence.

#### NEW SECTION

**WAC 212-17-495 Violation types, instances, and penalty assessments.** Penalties shall be assessed according to violation type.

The types of violations are:

- (1) Least--Type I;
- (2) Minimal--Type II;
- (3) Moderate--Type III;
- (4) Severe--Type IV.



## NEW SECTION

**WAC 212-17-500 Hearings.** (1) Any person may request a hearing regarding the assessment of a civil penalty.

(2) Hearings requests shall be filed with the office of the state fire marshal within fourteen days from the date of the service of civil penalty.

(3) Any person who requests a hearing shall be entitled to a hearing.

## NEW SECTION

**WAC 212-17-505 Informal conference.** The office of the state fire marshal will provide an opportunity for a person to informally discuss a civil penalty that has been assessed against them. An informal conference may be requested prior to a request for a formal hearing; however a formal hearing shall be requested within fourteen days of the date of service of the notice of civil penalty.

The request for an informal conference may be in any form; and

(1) Shall be addressed to the office of the state fire marshal; and

(2) Shall clearly state the subject to be discussed.

(3) An informal conference concerning civil penalties shall not exceed the fourteen days allowed for filing a formal hearing request.

(4) If the parties agree, an informal conference may be held by telephone.

(5) As the result of an informal conference, the state fire marshal may, for good cause, amend, withdraw, or reduce a civil penalty.

## NEW SECTION

**WAC 212-17-510 Formal hearing.** (1) A person may request a formal hearing at any time before or after an informal conference, as long as the fourteen-day period for requesting a hearing has not lapsed.

(2) The office of the state fire marshal will arrange for a

hearings officer to conduct the formal hearing.

(3) The office of the state fire marshal will set a date, time, and location for the formal hearing.

(4) The office of the state fire marshal will notify, by letter, the person requesting the hearing (or their designated representative) of the date, time, location and the hearings officer conducting the formal hearing.

(5) The hearings officer will hear the case and render a proposed opinion and order including recommended findings of fact and conclusions of law, according to chapter 34.05 RCW.

(6) The formal hearing shall be conducted as follows:

(a) The hearings officer will act as an impartial third party.

(b) It is not necessary for the person that requested the hearing to be represented by legal council.

(c) Testimony shall be taken under oath.

(d) All evidence of a type commonly relied upon by a reasonably prudent person in the conduct of their serious affairs is admissible.

(e) Hearsay evidence is admissible if it meets statutory standards for being reliable and trustworthy.

(7) The proposed opinion and order shall be reviewed by the state fire marshal and, if accepted, finalized and issued as a final order.

#### NEW SECTION

**WAC 212-17-515 Penalty adjustments.** (1) The assessment of adjustment of penalties for amounts other than those set by chapter 70.77 RCW shall be done only by the state fire marshal through a hearings process either formally or informally.

(2) The assessment of penalties for not being in conformance with chapter 70.77 RCW and/or chapter 212-17 WAC may be made only after considering:

(a) The gravity and magnitude of the violation;

(b) The person's previous record;

(c) Such other considerations as the state fire marshal may consider appropriate.

(3) During a formal hearing or informal conference, the office of the state fire marshal may modify or adjust the citation, cited violations, or penalties assessed in order to meet the requirements of these rules and to ensure uniformity and consistency in their application statewide.



## NEW SECTION

**WAC 212-17-520 Payment of civil penalty.** (1) The penalty shall be paid to the office of the state fire marshal immediately after an order assessing a civil penalty becomes final by operation of law or on an appeal.

(2) The attorney general may bring an action in the name of the Washington state patrol, through the director of fire protection, in the superior court of Thurston County or of any county in which the violator may do business to collect any penalty imposed under chapter 70.77 RCW.

## NEW SECTION

**WAC 212-17-525 Type I violations.** Type I violations are subject to penalties ranging from a warning to seventy-five dollars a day depending upon the instance and in accordance with WAC 212-17-490.

Examples of Type I violations include, but are not limited to:

(1) Failure to post "no smoking" signs at the retail fireworks stand;

(2) Failure to provide required fire extinguishing equipment at the retail fireworks stand;

(3) Failure to maintain a clean, orderly area with twenty feet of the retail sales area;

(4) Failure to keep a copy of the retail fireworks stand license at the retail stand while the stand is open;

(5) Possession of illegal fireworks worth less than fifty dollars.

## NEW SECTION

**WAC 212-17-530 Type II violations.** Type II violations are subject to penalties ranging from a warning to one hundred fifty dollars a day depending upon the instance and in accordance with WAC 212-17-490.

Examples of Type II violations include, but are not limited to:

(1) Failure to have a person eighteen years of age or over inside the retail stand during business hours;

(2) Possession of more than fifty dollars but less than one hundred dollars of illegal fireworks;

(3) Discharge of less than fifty dollars worth of illegal fireworks;

(4) Smoking or the ignition of fireworks within fifty feet of any fireworks stand.

#### NEW SECTION

**WAC 212-17-535 Type III violations.** Type III violations are subject to penalties ranging from seventy-five dollars to two hundred fifty dollars a day depending upon instance and in accordance with WAC 212-17-490.

Examples of Type III violations include, but are not limited to:

(1) Possession of one hundred dollars or more of illegal 1.4G fireworks.

(2) Sale of any amount of illegal 1.4G fireworks without the necessary licenses issued by the office of the state fire marshal and/or where required, a permit from the local authority having jurisdiction.

(3) The purchase of fireworks by a Washington state retail fireworks stand operator from an unlicensed wholesaler.

(4) Manufacturing or altering fireworks without the necessary state license and local permit.

(5) Storage of any amount of 1.3G fireworks without the necessary licenses issued by the department of labor and industries and the Bureau of Alcohol, Tobacco and Firearms, and a permit from the local authority having jurisdiction.

(6) Use of fireworks in a manner that presents a danger to life or property.

#### NEW SECTION

**WAC 212-17-540 Type IV violations.** Type IV violations are subject to penalties ranging from one hundred twenty-five dollars to one thousand dollars a day depending on instance and in accordance with WAC 212-17-490.

Examples of Type IV violations include, but are not limited to:

(1) Possession of fifty dollars or more of 1.3G fireworks without the necessary license issued by the office of the state fire marshal and the required permit from the local authority having jurisdiction.

(2) Conducting a public fireworks display without the necessary license issued by the office of the state fire marshal and the required permit from the local authority having jurisdiction.



(3) Purchase of any amount of 1.3G fireworks without the necessary licenses issued by the office of the state fire marshal and/or where required, the local authority having jurisdiction.

(4) Conducting a public display using illegal or unauthorized fireworks.

(5) Intentional or indiscriminate use of fireworks which injure someone or cause more than two hundred fifty dollars in property damage.

(6) Wholesale sales of fireworks without a valid Washington state wholesalers license.

(7) Importing, or causing to be imported, fireworks into the state of Washington without a valid Washington state importers license.